



MSPC Advisory Circular

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR PROGRAMS • MOBILE SOURCE POLLUTION CONTROL PROGRAM

A/C No. 27

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Subject: Public Release of Information Contained in Applications for
Certification of Light Duty Vehicles and Heavy Duty Engines

A. Purpose

The purpose of this Advisory Circular is to advise vehicle and engine manufacturers of the criteria and procedures that will be employed by the Agency in dealing with requests for public disclosure of information contained in applications for certification of light duty vehicles and heavy duty engines. This Advisory Circular also indicates the type and quantum of information which must be submitted by any applicant to justify any claim that specified information is entitled to be held confidential by the Agency.

B. Background

1. Section 208(a) of the Clean Air Act provides that:

"Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with the motor vehicle regulations"

2. Section 208(b) of the Clean Air Act provides that:

"Any records, reports or information....shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential...."

3. The information required to be included in an application for certification is necessary to enable the administrator to determine whether a new motor vehicle or engine is in compliance with 40 CFR Part 85 and with Title II,

Part A of the Clean Air Act. Thus, the information in a certification application is obtained in part pursuant to Section 208(a) and is subject to the provision of Section 208(b).

4. In summary, these provisions require the Administrator to disclose to the public all non-trade secret information; requires him to keep trade secret information confidential; and requires the person who has submitted the information claimed to be confidential to make a satisfactory showing that the information in question would divulge trade secrets, if disclosed. Under no circumstances, however, is emission data to be withheld from the public.

5. In general, a "trade secret" is information, which (1) is not widely known within an industry, (2) relates to a business or trade, and (3) confers some competitive advantage upon the holder of the information, as against those who do not know it.

6. To apply these general criteria to information contained in certification applications, the following guidelines have been established.

7. It is important to note that these guidelines are intended only to guide, not to establish binding requirements. Thus, any particular information determined to constitute a trade secret will not be disclosed, even if the guidelines suggest that that class of information will normally be released upon request. Likewise, any information determined not to constitute a trade secret will be disclosed, even if the guidelines suggest that that class of information will normally be held confidential.

8. The procedure for dealing with requests for the disclosure of information contained in certification applications will be that specified in Part 2 of Title 40, Code of Federal Regulations.

C. Applicability

The provisions of this Advisory Circular become effective immediately upon publication of this Circular and are applicable to information submitted with respect to light duty vehicles and heavy duty engines of all past, present, and future model years.

D. Public Availability of Information in the Application for Certification

1. Since the question of whether certain certification information constitutes a trade secret is largely dependent upon the time at which the information is requested to be made available, the following guidelines classify information according to the time during which the information would probably be considered to be trade secret.

2. EPA will make available, upon request, the results of all emission tests conducted (see Section VIII of EPA's recommended light duty and heavy duty application formats), whether or not these tests were conducted by EPA. The test results to be released include the tests done before and after unscheduled maintenance, although those results would not identify the type of maintenance conducted if the manufacturer makes a satisfactory showing.

3. The following information in the application formats will be made available within the time limits established by 40 CFR Part 2, unless the manufacturer can make a satisfactory showing that release of such information would disclose a trade secret:

Light Duty 1/

Part I

Technical Representatives (I)
Fuel Analysis (II)
Procedures (III)

Part II

Deterioration Factor Data

Heavy Duty 1/

Part I

Technical Representatives (I)
Fuel Analysis (II)
Durability Cycle (III)
Description, Test Facility (IV)

Part II

Statement of Conformance (IV)
Deterioration Factor Calculations (VI)
Certification Data (VII)

4. Upon satisfactory showing by the manufacturer, EPA will consider the following information not available to the public, until after the respective vehicles or engines have been introduced into the market:

Light Duty

Part I

Engine Family Description (IV)
Family Sales (V) 2/
Vehicle Description (VI)
Fleet Vehicles (VII)
Maintenance to be Performed
on Test Vehicles (IX)
Telephone Log (X)

Part II

Statement of Device Safety
Vehicle Log Sheet (durability and
emission data vehicles)

Heavy Duty

Part I

Engine Family Description (V)
Family Sales (VI) 2/
Proposed Test Engines (VII)
Maintenance to be Performed
on Test Engines (IX)
Telephone Log (X)

Part II

Statement of Device Safety (I)
Sample of Label (II)

1/ The Roman numerals in parenthesis refer to the applicable sections in EPA's recommended application formats for light duty vehicles (see Advisory Circular No. 14) and heavy duty engines (see Advisory Circular No. 20).

2/ Upon satisfactory showing by the manufacturer, EPA will release sales data in terms of percentage of sales within the engine family, but not total projected sales volume, since only the percentage figures are used to select vehicles or engines to represent engine families.

Light Duty

Part II (Continued)

Maintenance Log (durability and emission data vehicles)
Official Test Results (vehicle description section only)
Certificates
Tune-up Specifications
Required Supplementary Information

Heavy Duty

Part II (Continued)

Crankcase Emission (III)
Certificates (V)
Emission Data and Engine Maintenance (maintenance section only) (VIII)
Product Line Description (IX)
Fuel System Flow Curves (X)
Distributor or Injection Advance Curves (XI)
Crankcase Emission Valve Flow Curves (XI)
Tune-up Data (XIII)
Supplemental Information (XIV)

5. Upon satisfactory showing by the manufacturer that release of blueprints at any time would divulge trade secrets, EPA will consider that blueprints submitted with the application for certification of light duty vehicles or heavy duty engines are not to be available at any time.

6. Upon a satisfactory showing by the manufacturer, all information released prior to introduction of any vehicle or engine into the market will be coded so that vehicle, engine, and emission control system characteristics (such as engine displacement) will not be described.

E. Comment Period for Manufacturers

1. Information respecting prior model years.

a. Upon request for release of information contained in certification applications for model years prior to 1974, EPA will notify the manufacturer of its receipt of such a request. The manufacturer will then have thirty days in which to make a satisfactory showing that such information would, if made public, divulge methods or processes entitled to protection as trade secrets. If the manufacturer submits no material in support of a claim of confidentiality, or if the material submitted fails to satisfy the Administrator that a trade secret would be disclosed, the information will be released as provided in Section E.4 below. Once the manufacturers have been notified of requested information, the Administrator will not notify the manufacturer of subsequent requests for the same information unless the manufacturer had previously made a showing of confidentiality which the Administrator determined was unsatisfactory. In such case, the Administrator will again notify the manufacturer of receipt of a request for information in accordance with the procedure described above.

b. Manufacturers may, before receiving notice of receipt of a request from EPA, notify EPA that information contained in prior model year applications for certification, or parts thereof, are not considered to be trade secrets and therefore may be released upon request. Such notification will remove the necessity of notifying manufacturers of individual requests for such information.

2. Information respecting model year 1974.

a. At present, to retain confidential treatment of information submitted to the Administrator, manufacturers need do nothing until a request for such information has been made. To reduce the administrative burden imposed by the necessity to notify a manufacturer each time such a request is received, EPA intends shortly to promulgate an amendment to 40 CFR 2.107a. This amendment would authorize the Administrator to require manufacturers, at the time of submission of a certification application (or at such other time as the Administrator may designate), either to make a satisfactory showing that disclosure of such information to the public would divulge methods or processes entitled to protection as trade secrets or to waive any claim of confidentiality with respect to such information. The amendment would thus allow the Administrator to require such a showing before a specific request for release of the information has been received.

b. EPA intends to require such a showing with respect to 1974 model year information as soon as the amendment is promulgated and in effect. In the interim, EPA can only require that manufacturers make such a showing on information they regard as trade secret when a request for the release of such information is made.

c. Whether or not a request for the information initiates EPA action, the procedure for determining whether or not the information will be released is the same. The manufacturer will be allowed thirty days to make a showing that the disclosure of any information in his application for certification would divulge methods or processes entitled to protection as trade secrets. If the manufacturer submits no material in support of his claim of confidentiality, or if the material submitted fails to satisfy the Administrator that a trade secret would be disclosed, the information contained in the application will be provided in Section E.4 below. In supporting his claim of confidentiality, the manufacturer may refer to the guidelines outlined in this Advisory Circular as to the position EPA is likely to take with regard to the confidentiality of the information. If the manufacturer's position differs from the guidelines, his claim that the information constitutes a trade secret must be substantiated by facts and data of greater detail and specificity than if his claim were consistent with the presumption of the guidelines.

3. Information respecting 1975 and subsequent model years.

a. Assuming the promulgation of the amendment discussed in Section E.2.a above, manufacturers will be required to indicate at the time of submission of the application for certification what information would, if disclosed, divulge methods or processes entitled to protection as trade secrets. The manufacturer should simultaneously submit any material which supports the claimed confidential status of such information. If the applicant submits no material in support of his claim of confidentiality, or if the material submitted fails to satisfy the Administrator that a trade secret would be disclosed, the information contained in the application will be released as provided in Section E.4 below.

b. In supporting his claim of confidentiality, the manufacturer may refer to the guidelines outlined in this Advisory Circular as to the position EPA is likely to take with regard to the confidentiality of the information. If the manufacturer's position differs from the guidelines, his claim that the information constitutes a trade secret must be substantiated by facts and data of greater detail and specificity than if his claim were consistent with the presumption of the guidelines.

4. Disclosure of all information.

If a manufacturer submits some material in support of his claim that information contained in the application for certification would, if made public, divulge methods or processes entitled to protection as trade secrets, but EPA determines the manufacturer has failed to make a satisfactory showing that such information constitutes a trade secret, manufacturers will be given written notice of such determination thirty days prior to the release of such information. If the manufacturer submits no material in support of his claim within thirty days, EPA will give written notice of its intent to release such information thirty days hence.

F. Requests for Information

Requests for information should be made to the Director, Certification and Surveillance Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Requests should specify which parts of each application are requested. Test data will be made available on a bi-weekly basis for the previous two-week period. Unless payment of fees is waived pursuant to 40 CFR 2.111, fees for supplying data will be charged according to the following schedule:

1. Search for records - \$2.50 per one-half hour
2. Reproduction, duplication, or copying of records - \$0.20 per page.
3. Certification of authentication of records - \$4.00 per application.

Charges of \$10.00 or more must be prepaid. Anyone requesting a waiver of payment of fees should specify the reasons why waiver would be in the public interest.



Eric O. Stork, Director
Mobile Source Pollution Control Program